

1 important, --

2 A. Absolutely.

3 Q. -- in your mind?

4 A. Certainly.

5 Q. And what sort of maintenance are we
6 talking about? And I'm speaking
7 generally now. We'll get to our case
8 specifically.

9 A. Seeing it's in good repair, for example;
10 the oil is changed; the sparkplugs are
11 changed. At the beginning of the season
12 you can take it to someone if it's not
13 performing properly, and have it checked
14 over. And certainly if it's dunked,
15 getting the salt water emersion, you want
16 it repaired.

17 Q. Other things than salt water emersion can
18 cause you to have problems with an
19 outboard motor; is that fair to say?

20 A. Oh, yeah they wear out under certain
21 conditions. Teleflex cables, for
22 example, wearing out.

23 Q. How about things that would cause the
24 motor to stall?

1 A. Well, you can get water in the fuel.
2 That would cause a motor to stall.

3 Q. Could the oil, problems with the oil,
4 cause it to stall?

5 A. Well, if you don't put any oil in it, you
6 can have some real problems. It'll
7 seize.

8 Q. Sure.

9 A. Yeah, lots of things can happen to a
10 motor.

11 Q. Okay.

12 A. However, this particular case is a little
13 bit different because we have an outboard
14 motor repairer suggesting, or
15 recommending, that certain electrical
16 pieces of equipment be changed out that
17 would have to do with possible failure of
18 the motor.

19 Q. Your report lists the documents that you
20 reviewed before you came -- before you
21 wrote your report. Have you reviewed
22 additional -- and I understand you've
23 also reviewed the deposition of Mr. King.

24 A. Yes.

1 Q. You've made that clear. Have you
2 reviewed any other documents?

3 A. Yes, a number of other documents.

4 Q. Okay, can you tell me what?

5 A. Sure. Two additional depositions.

6 [Looking through documents.] Deposition
7 of Alex Dick. And it's not here. It
8 should be here.

9 Q. Wagner is it?

10 A. Yeah, and Nicholas Wagner.

11 MR. ROSENTHAL: Also, just for
12 the record, I wanted to just put
13 something on the record. A number of
14 documents were just handed to me at the
15 beginning of the deposition that Mr.
16 Sargent has not had a chance to look
17 through, including what appear to be
18 daily labor reports and a standard diary,
19 a copy of which was handed to my hotel
20 room last night.

21 And Mr. Sargent has not had a
22 chance to look through any of those
23 documents yet.

24 A. I think that's about it.

1 Q. Okay, you didn't get a chance to look at
2 the diary last night?

3 A. No. And the only other information that
4 I have in my file are the two things I
5 got from the web.

6 Q. Okay, the two depositions that you
7 referenced, did that cause you to change
8 your opinion at all?

9 A. No.

10 Q. Was there anything in there that
11 solidified your opinion?

12 A. Yes, I think Mr. Dick talks about also he
13 knew about the engine stalling. In other
14 words, there were others who knew about
15 the condition of the engine. I'm reading
16 directly from his deposition, page 36,
17 *"Do you know whether the engine stalled*
18 *or not? I heard that it did. Who told*
19 *you that? I don't remember who told me*
20 *that. I heard various accounts."*

21 So, he knew about the stalling.

22 Q. Well, because he's talking about the
23 engine stalling in the incident that
24 caused the personal injury.

1 A. Yes, yeah, right.

2 Q. But not preexisting stalling.

3 A. No, he heard about the stalling.

4 Q. The fact that the engine had stalled --

5 A. Right.

6 Q. -- in connection with the incident Mr.

7 Ramsey's brought the suit for.

8 A. That was my reading of it.

9 Q. Well, that'll speak --

10 MR. ROSENTHAL: Well, the
11 testimony will speak for itself.

12 MR. MURPHY: Sure it will. Okay.

13 Q. Let's forge ahead. Like Sam says, it is
14 what it is.

15 A. It's there or it's not there.

16 Q. Exactly. Have you interviewed Mr.
17 Ramsey?

18 A. No.

19 Q. Have you spoken to him at all?

20 A. No.

21 Q. Would you be able to pick him out of a
22 lineup?

23 A. No.

24 Q. Okay, even on the phone?

1 A. Even on the phone.

2 Q. Have you consulted any treatises or
3 professional documents, standards, regs.,
4 that sort of thing?

5 A. No, not in this particular case.

6 Q. You've got your report in front of you,
7 and I'm not trying to keep us here longer
8 than we've got to, so --

9 A. Brevity is your middle name.

10 Q. So, soul of wit, right?

11 So it's fair to say you
12 understand that Mr. Ramsey was employed
13 aboard the Wood 1.

14 A. No, I just understood he's employed by
15 Jay Cashman. Yeah, aboard the vessel.

16 Q. Okay, do you have any understanding as to
17 what his job or duties aboard the vessel
18 were?

19 A. Well, he was employed as a mate engineer.
20 And he did practically anything that he
21 was required. He ran the boat, although
22 he was not a captain. He did maintenance
23 work. He handled lines whenever
24 necessary; whatever. He was not a crane

1 operator, though.

2 Q. And it's your understanding as well that
3 the incident occurred at Barnegat Inlet
4 Lighthouse on the coast of New Jersey?

5 A. That's correct.

6 Q. Have you ever been there?

7 A. No.

8 Q. And it's fair to say you haven't reviewed
9 any documents concerning the tides or
10 charts or current information; that sort
11 of thing?

12 A. Yeah, I went to the charts. I tried to
13 pick out some tide information, but there
14 was no tide information I could get. I
15 tried it from the Internet, the web. I
16 tried to find out whether there was
17 anything published. I could not find
18 anything published about the tides.

19 Q. Okay.

20 A. I was looking for that specifically. And
21 I think what it would require is talking
22 to local fisherman, for example, local
23 operators, marine operators in that area.
24 And that would require, perhaps, a trip

1 up to Barnegat, and I just never made it.

2 Q. Okay.

3 A. So, we have to go to the best source of
4 information. And the best source of
5 information are the fellows who testify
6 about this in the depositions. And they
7 range anywhere from 6 to 12 knots,
8 current conditions. And if you want
9 other information you go to the -- as I
10 remember -- the Coast Guard or Corp of
11 Engineers accident report. And that
12 talks about 4 to 5, or more, knots.

13 Q. And why were you looking for the -- you
14 mentioned you did some things to try and
15 find that information.

16 A. Well, it goes back to trying to find out
17 what horsepower might be required on this
18 little boat to have the proper
19 maneuverability conditions. And I found
20 that 40 horsepower is not sufficient. It
21 should have been more than 40 horsepower.

22 Q. So, as far as quantifying the tidal
23 conditions or the current, the condition
24 of the current, you just relied on other

1 sources?

2 A. Yes.

3 Q. Okay. And as far as the skiff itself
4 that you mentioned, you've never seen
5 that?

6 A. No. Way back I originally requested that
7 I visit the skiff and inspect it, find
8 out its size, dimensions, how much it
9 weighs, in terms of type construction. I
10 was advised, however, the skiff had been
11 taken out of service and was no longer
12 available. *"Taken out of service,"* could
13 have meant anything like, *"We don't know*
14 *where it is,"* to *"We cut it up for*
15 *scrap."* But, it was not available for
16 inspection.

17 Q. And why, specifically, did you want to
18 inspect it?

19 A. Oh, I wanted to find out what size it
20 was. All we know is it ranges 17, 18, to
21 23 feet long. I think it's probably 17
22 or 18. How wide is it? I have to look
23 at the photographs, and possibly 5 feet
24 wide. I have to know how deep it is.

1 And the only thing that I have on that is
2 2 1/2 to 3 feet draft, plus a foot
3 freeboard, which means it's somewhere
4 around 3 to 3 1/2 feet deep at the side.

5 And I thought that looking at the
6 photographs might help, but no one has a
7 tape, nor is there anything I can use as
8 a measuring reference point to determine
9 anything about the size of the vessel.

10 So, that I have to look at it when
11 someone says, *"17 or 18 feet long,"* I
12 then have to say, *"Well, is it 2 1/2, 3*
13 *feet, 3 1/2 feet deep at the side; how*
14 *wide is it?; it's 4 1/2 feet, 5 feet*
15 *wide,"* to give me a range.

16 But, I have not measured it, nor
17 does it appear anyplace in the record
18 exactly what size this is.

19 Q. All right, let's go through your report
20 together, okay? And why don't we start
21 on page 2, halfway down, it says, *"when*
22 *Mr. Ramsey reached the stern of the*
23 *dredge, the captain requested that the*
24 *parts be brought to the bow."*

1 You've seen Ken King's
2 deposition?

3 A. Right.

4 Q. And you understand that he disputes that?

5 A. Yes.

6 Q. So that was Mr. Ramsey's testimony?

7 A. Yeah, this is Mr. Ramsey's. Remember, at
8 this point I did not have Mr. King's
9 deposition? There are certain
10 differences between the two, but the
11 stories basically are the same. It's a
12 question of where he told him or did not
13 tell him to bring the skiff.

14 Q. Well, it's kind of an important point,
15 don't you think?

16 A. No, I don't think it has anything to do
17 with anything.

18 Q. Whether he voluntarily took a skiff that
19 he knew was stalling, and moved it around
20 the other side so that he didn't have to
21 carry a box of parts versus somebody
22 ordering him to do it seems --

23 A. No, I don't think so. I think that he
24 didn't want to be there in the first

1 place, at the stern. He got there
2 because the vessel, the skiff, stalled
3 and brought him there. I don't think he
4 would have ever brought the vessel to the
5 stern. He would have brought it to the
6 side. That is, the starboard side of the
7 wood 1, rather than the stern. It was
8 only because of this vessel -- that is,
9 the skiff -- stalling that he got himself
10 into that position.

11 Q. But, at that point, he knew the skiff was
12 stalling.

13 A. Oh, yes. Everyone did, certainly. When
14 I say, "*everyone*," Mr. King knew about
15 it, and certainly Mr. Ramsey knew about
16 it, and others knew about it.

17 Q. Do you have any other -- I really just
18 wanted to ask you the source for some of
19 the assertions that are made in the
20 report. So, --

21 A. For example?

22 Q. well, the idea that the captain ordered
23 him to -- or requested that the parts be
24 brought to the bow.

1 A. That's what Mr. Ramsey says.

2 Q. And do you base that on any other source?

3 A. No, Mr. Ramsey is the one who says that.

4 Q. Okay.

5 A. Remember, this report was written at the
6 time I did not have Mr. King's. I had
7 Mr. Ramsey's deposition, and Mr. Ramsey's
8 statement.

9 Q. Sure, sure. Okay, I'm just going to read
10 on; *"As Mr. Ramsey was maneuvering away*
11 *from the stern of the dredge, while*
12 *trying to keep clear of the stern mooring*
13 *lines, the skiff struck one of the*
14 *mooring lines."*

15 And, again, you base that on Mr.
16 Ramsey's testimony?

17 A. Yes, that comes from his statement. It
18 does not come from his deposition. It
19 comes from his statement.

20 Q. Okay, and the statement was nearer in
21 time?

22 A. Yes, the statement was what, two months
23 after the accident? while the
24 deposition, I think, was much later than

1 that. I know it's much later. The
2 deposition is 2004 and the accident
3 occurred in 2001.

4 Q. So at least at the time you wrote the
5 report, it was your understanding that
6 the vessel hit the mooring line and then
7 stalled out?

8 A. Possibly. It's not quite clear whether
9 the hitting the mooring line stalled it
10 out, or whether it just stalled out by
11 itself.

12 Q. And then hit the mooring line?

13 A. Possibly.

14 Q. Okay. And can that cause the boat to
15 stall, hitting the mooring line?

16 A. Could. If the propeller hit the mooring
17 line it could.

18 Q. Could that cause a well-maintained motor
19 to stall?

20 A. Sure it could.

21 Q. You've got the records from the marina
22 that did the repairs, don't you?

23 A. Yes.

24 Q. You may want to take a look at them, as

1 well.

2 A. I think that's Hochstrasser's.

3 Q. Uh-huh.

4 A. Yes.

5 Q. And according to your report, the note
6 states, -- how do you pronounce that,
7 s-t-a-t-o-r?

8 A. Stator.

9 Q. And what does the stator do?

10 A. Stator is a connection with the
11 alternator, generator aboard the
12 outboard.

13 Q. *"Stator, voltage regulator, switch boxes,
14 starter solenoid were not changed."*

15 A. Uh-huh.

16 Q. I'm just going to ask you to explain some
17 of this to me. And I'm not quite sure I
18 understood you previously. The stator
19 does what?

20 A. Has to do with the generator aboard the
21 motor.

22 Q. And what does it do for the generator?

23 A. Provides the electricity to generate the
24 sparkplug to produce the spark.

1 Q. So that would be implicated when you're
2 starting the motor?

3 A. Yes.

4 Q. And how about the voltage regulator, what
5 does that do?

6 A. Similar to what you have onboard an
7 automobile, to when you're charging your
8 battery, it keeps the charge to the
9 battery at a constant voltage. Rather
10 than just going up to extreme high
11 levels, it keeps it at a reasonable level
12 to charge your battery.

13 Q. The switch boxes, what does that do?

14 A. That's just an on and off switch
15 someplace on the motor.

16 Q. And the starter solenoid, what does that
17 do?

18 A. When you push something, it will then
19 activate the starter motor.

20 Q. Okay. Now, what evidence, or what
21 support do you have for the idea that any
22 of those issues caused the vessel to
23 stall, caused the motor to stall?

24 A. They're all electrical parts. The

1 voltage regulator -- if the voltage drops
2 for any reason or other, you don't get
3 the voltage to the sparkplug, and it'll
4 stall on you.

5 Q. Do you know whether that happened in this
6 case?

7 A. I have no idea.

8 Q. One way or another?

9 A. Have no idea. I did not see the motor in
10 the condition it was after it left
11 Hochstrasser before the casualty
12 occurred, before it was dumped the second
13 time, or the third time, to make some
14 determination. But, without that, you
15 can't do it.

16 I would assume that these people
17 -- I say, "*these people*" -- the
18 Hochstrasser mechanic, tested out these
19 parts and said, "*This is no good, we*
20 *should change it,*" or, "*This is no good,*
21 *we should change it.*"

22 Q. You haven't spoken to anyone from there?

23 A. No, I have not spoken --

24 Q. Has anyone informed you of their

1 position?

2 A. Nope.

3 Q. So, that's just a --

4 A. Right.

5 Q. -- guess on your part?

6 A. No, not a guess. Remember, the vessel
7 got under water, and I guess the rain --
8 and it sotted out.

9 Q. Uh-huh.

10 A. And it was taken over to Hoffstrasser --
11 or Hochstrasser -- to make certain it's
12 put in the proper operating condition.
13 And someone decided to do it, as far as I
14 can see, on the cheap. And when I say,
15 "*on the cheap*," not do a couple of items
16 here, and changing out the electrical end
17 of it.

18 when you have something dunked in
19 salt water, normally you change out
20 everything to do with the electrical.

21 Q. And why is that?

22 A. The electrical can short out. It's
23 damaged, rusted, corroded. It's just
24 general good practice, marine practice,

1 when you dunk something, to submerge it
2 in salt water, to replace it immediately
3 thereafter, if you want to go back in
4 operation with it. That's the general
5 practice, and not to try to see, "*Well,*
6 *can we get by this, or not?*"

7 The cost of replacing this was
8 nominal, as I remember. In this
9 particular case, they decided not to do
10 it. And it's quite clear what they
11 indicated, "*stator, voltage regulator,*
12 *switch boxes, starter solenoid were not*
13 *changed.*" -- and we had that underlined,
14 were not changed -- "*Advise doing so*
15 *since it sank in salt water.*"

16 So here's a marina that does
17 repairs on engines saying, "*Look, this*
18 *thing sank in salt water; you'd better do*
19 *something about it.*" And someone decided
20 not to do it.

21 Q. Do you know how long it would take to
22 effect those repairs, typically?

23 A. I would think they'd be able to get those
24 repairs done in a week. I mean, it's a

1 Mercury outboard. It's a common outboard
2 motor. Someone must be a distributor of
3 an outboard. And I guess if you pushed
4 these fellows to do it, you could get it
5 done in a couple of days. But, certainly
6 no more than a week.

7 Q. And do you have an idea of what the cost
8 would be for those kind of repairs?

9 A. I think someone basically did the same
10 repairs, or was telling about the same
11 repairs. Here it is, "*A harness, relay,*
12 *solenoid.*" It looks like about \$120
13 worth. And it would be about the same
14 thing here, \$120 worth. So, really it
15 should only have been \$120 more than
16 \$350.

17 So, it would add up to less than
18 \$500 for the entire change-out of
19 everything on this engine to make it as
20 -- I wouldn't say it's as good as new --
21 but, as good as it was before, and
22 suitable to operate.

23 Q. Let me ask you this. Let's just assume
24 hypothetically, you'd been called in the